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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

UM CORPORATION, a Japanese
corporation,

Plaintiff,

v.

TSUBURAYA PRODUCTIONS CO.,
LTD., a Japanese corporation,

Defendant.

AND RELATED CROSS-CLAIMS

Case No. 2:15-cv-03764-AB (AJWx)

**JOINT PROPOSED JURY
INSTRUCTIONS**

Pretrial Conf.:
Trial:

October 20, 2017
November 7, 2017

1 Pursuant to Local Rule 51-1 and paragraph II.C of the Court's November 5,
2 2015 Order re Jury Trial [Dkt. 38], plaintiff and counterdefendant UM Corporation,
3 defendant and counterclaimant Tsuburaya Productions Co., Ltd., and
4 counterdefendants Golden Media Group, Inc. and TIGA Entertainment Company,
5 Ltd. hereby submit this Joint Set of Jury Instructions on which there is agreement.

6 Dated: October 6, 2017

MICHAEL CHIBIB, P.C.
JEFFREY D. WEXLER
TIMOTHY RAWSON
PILLSBURY WINTHROP SHAW
PITTMAN LLP

9
10 By:

/s/ Jeffrey D. Wexler

11 Jeffrey D. Wexler
12 Attorneys for Plaintiff and Counterdefendant
13 UM CORPORATION and Counterdefendants
GOLDEN MEDIA GROUP, INC. and TIGA
ENTERTAINMENT COMPANY, LTD.

14 Dated: October 6, 2017

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18 By:

/s/ Daniel C. Posner

19 Daniel C. Posner
20 Attorneys for Defendant and
21 Counterclaimant TSUBURAYA
22 PRODUCTIONS CO., LTD.
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I attest that Daniel C. Posner, counsel for defendant and counterclaimant Tsuburaya Productions Co., Ltd. concurs in this filing's content and has authorized the filing.

Dated: October 6, 2017

By:

/s/ Jeffrey D. Wexler

Jeffrey D. Wexler

Attorneys for Plaintiff and Counterdefendant
UM CORPORATION and Counterdefendants
GOLDEN MEDIA GROUP, INC. and TIGA
ENTERTAINMENT COMPANY, LTD.

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PROPOSED INSTRUCTION NO. 1

**DUTY OF JURY (COURT READS AND PROVIDES WRITTEN
INSTRUCTIONS AT THE BEGINNING OF TRIAL)**

Members of the jury: You are now the jury in this case. It is my duty to instruct you on the law.

These instructions are preliminary instructions to help you understand the principles that apply to civil trials and to help you understand the evidence as you listen to it. You will be allowed to keep this set of instructions to refer to throughout the trial. These instructions are not to be taken home and must remain in the jury room when you leave in the evenings. At the end of the trial, these instructions will be collected and I will give you a final set of instructions. It is the final set of instructions that will govern your deliberations.

It is your duty to find the facts from all the evidence in the case. To those facts you will apply the law as I give it to you. You must follow the law as I give it to you whether you agree with it or not. And you must not be influenced by any personal likes or dislikes, opinions, prejudices or sympathy. That means that you must decide the case solely on the evidence before you. You will recall that you took an oath to do so.

Please do not read into these instructions or anything I may say or do that I have an opinion regarding the evidence or what your verdict should be.

Authority: Manual of Model Jury Instructions for the District Courts of the Ninth Circuit (2007 ed.; last updated June 2017), Civil Instruction 1.2 (for use if it is the Court's practice, at the start of the case, to give instructions and to provide the jury with written copies of the instructions).

1 **PROPOSED INSTRUCTION NO. 2**
2 **DUTY OF JURY (COURT READS INSTRUCTIONS AT THE BEGINNING**
3 **OF TRIAL BUT DOES NOT PROVIDE WRITTEN COPIES)**

4 Members of the jury: You are now the jury in this case. It is my duty to
5 instruct you on the law.

6 It is your duty to find the facts from all the evidence in the case. To those
7 facts you will apply the law as I give it to you. You must follow the law as I give it
8 to you whether you agree with it or not. And you must not be influenced by any
9 personal likes or dislikes, opinions, prejudices or sympathy. That means that you
10 must decide the case solely on the evidence before you. You will recall that you
11 took an oath to do so.

12 At the end of the trial I will give you final instructions. It is the final
13 instructions that will govern your duties.

14 Please do not read into these instructions, or anything I may say or do, that I
15 have an opinion regarding the evidence or what your verdict should be.

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25 **Authority:** Manual of Model Jury Instructions for the District Courts of the Ninth
26 Circuit (2007 ed.; last updated June 2017), Civil Instruction 1.3 (for use if it is the
27 Court’s practice, at the start of the case, to give instructions but not to provide the
28 jury with written copies of the instructions).

PROPOSED INSTRUCTION NO. 3
DUTY OF JURY (COURT READS AND PROVIDES
WRITTEN INSTRUCTIONS AT END OF CASE)

Members of the Jury: Now that you have heard all of the evidence [and the arguments of the attorneys], it is my duty to instruct you on the law that applies to this case.

[Each of you has received a copy of these instructions that you may take with you to the jury room to consult during your deliberations.]

or

[A copy of these instructions will be sent to the jury room for you to consult during your deliberations.]

It is your duty to find the facts from all the evidence in the case. To those facts you will apply the law as I give it to you. You must follow the law as I give it to you whether you agree with it or not. And you must not be influenced by any personal likes or dislikes, opinions, prejudices, or sympathy. That means that you must decide the case solely on the evidence before you. You will recall that you took an oath to do so.

Please do not read into these instructions or anything that I may say or do or have said or done that I have an opinion regarding the evidence or what your verdict should be.

Authority: Manual of Model Jury Instructions for the District Courts of the Ninth Circuit (2007 ed.; last updated June 2017), Civil Instruction 1.4.

PROPOSED INSTRUCTION NO. 4
CLAIMS AND DEFENSES

To help you follow the evidence, I will give you a brief summary of the positions of the parties:

Tsuburaya Productions Co. Ltd. (“TPC”) asserts that it is the owner of the copyrights in the “Ultraman” superhero characters and all television series and motion pictures based on those characters (the “Ultraman works”), and that UMC Corporation (“UMC”), TIGA Entertainment Company, Ltd. (“TIGA”), Golden Media Group, Inc. (“GMG”), and Ultraman USA, Inc. (“Ultraman USA”) have committed copyright infringement by distributing or displaying Ultraman works in the United States without TPC’s authorization.

UMC, TIGA, GMG, and Ultraman USA deny TPC’s claim.

UMC, TIGA, and GMG assert as a defense to TPC’s claim that they have a valid license to distribute Ultraman works in the United States pursuant to a license agreement dated March 4, 1976 between TPC and Sompote Saengduenchai (“Mr. Sompote”), which was later assigned to UMC.

TPC asserts that the March 4, 1976 License Granting Agreement is not an authentic contract, but rather was fabricated and forged by Mr. Sompote, and that even if the document was ever an authentic contract, it has been terminated and is no longer in effect.¹

TPC has the burden of proving that UMC, TIGA, GMG, and Ultraman USA have committed copyright infringement. UMC, TIGA, and GMG have the burden of proving that the March 4, 1976 License Granting Agreement is authentic and provides a defense to TPC’s copyright infringement claim. TPC has the burden of

¹ The parties agree that if TPC’s request for a jury instruction regarding the termination of the March 4, 1976 License Granting Agreement is not included in the final instructions given to the jury, then the text after “Mr. Sompote” should be deleted from this instruction.

1 proving that, if the March 4, 1976 License Granting Agreement was an authentic
2 contract, it has been terminated.²

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5 **Authority:** Manual of Model Jury Instructions for the District Courts of the Ninth
6 Circuit (2007 ed.; last updated June 2017), Civil Instruction 1.5 (modified to identify
7 the parties and their claims).

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25 _____
26 ² The parties agree that if TPC's request for a jury instruction regarding the
27 termination of the March 4, 1976 License Granting Agreement is not included in the
28 final instructions given to the jury, then this sentence should be deleted from this
instruction.

PROPOSED INSTRUCTION NO. 5

BURDEN OF PROOF—PREPONDERANCE OF THE EVIDENCE

When a party has the burden of proving any claim or affirmative defense by a preponderance of the evidence, it means you must be persuaded by the evidence that the claim or affirmative defense is more probably true than not true.

You should base your decision on all of the evidence, regardless of which party presented it.

Authority: Manual of Model Jury Instructions for the District Courts of the Ninth Circuit (2007 ed.; last updated June 2017), Civil Instruction 1.6 (modified to include bracketed language).

PROPOSED INSTRUCTION NO. 6

TWO OR MORE PARTIES—DIFFERENT LEGAL RIGHTS

You should decide the case as to each party separately. Unless otherwise stated, the instructions apply to all parties.

Authority: Manual of Model Jury Instructions for the District Courts of the Ninth Circuit (2007 ed.; last updated June 2017), Civil Instruction 1.8 (modified to choose among bracketed language).

PROPOSED INSTRUCTION NO. 7

WHAT IS EVIDENCE

The evidence you are to consider in deciding what the facts are consists of:

1. the sworn testimony of any witness;
2. the exhibits that are admitted into evidence;
3. any facts to which the lawyers have agreed; and
4. any facts that I [may instruct] [have instructed] you to accept as proved.

Authority: Manual of Model Jury Instructions for the District Courts of the Ninth Circuit (2007 ed.; last updated June 2017), Civil Instruction 1.9.

PROPOSED INSTRUCTION NO. 8

WHAT IS NOT EVIDENCE

In reaching your verdict, you may consider only the testimony and exhibits received into evidence. Certain things are not evidence, and you may not consider them in deciding what the facts are. I will list them for you:

- (1) Arguments and statements by lawyers are not evidence. The lawyers are not witnesses. What they [may say] [have said] in their opening statements, closing arguments and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers have stated them, your memory of them controls.
- (2) Questions and objections by lawyers are not evidence. Attorneys have a duty to their clients to object when they believe a question is improper under the rules of evidence. You should not be influenced by the objection or by the court's ruling on it.
- (3) Testimony that is excluded or stricken, or that you [are] [have been] instructed to disregard, is not evidence and must not be considered. In addition some evidence [may be] [was] received only for a limited purpose; when I [instruct] [have instructed] you to consider certain evidence only for a limited purpose, you must do so and you may not consider that evidence for any other purpose.
- (4) Anything you may [see or hear] [have seen or heard] when the court was not in session is not evidence. You are to decide the case solely on the evidence received at the trial.

Authority: Manual of Model Jury Instructions for the District Courts of the Ninth Circuit (2007 ed.; last updated June 2017), Civil Instruction 1.10.

PROPOSED INSTRUCTION NO. 9
EVIDENCE FOR LIMITED PURPOSE

Some evidence may be admitted only for a limited purpose.

When I instruct you that an item of evidence has been admitted only for a limited purpose, you must consider it only for that limited purpose and not for any other purpose.

[The testimony [you are about to hear] [you have just heard] may be considered only for the limited purpose of [*describe purpose*] and not for any other purpose.]

Authority: Manual of Model Jury Instructions for the District Courts of the Ninth Circuit (2007 ed.; last updated June 2017), Civil Instruction 1.11.

PROPOSED INSTRUCTION NO. 10

DIRECT AND CIRCUMSTANTIAL EVIDENCE

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is proof of one or more facts from which you could find another fact. You should consider both kinds of evidence. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give to any evidence.

Authority: Manual of Model Jury Instructions for the District Courts of the Ninth Circuit (2007 ed.; last updated June 2017), Civil Instruction 1.12.

PROPOSED INSTRUCTION NO. 11
RULING ON OBJECTIONS

There are rules of evidence that control what can be received into evidence. When a lawyer asks a question or offers an exhibit into evidence and a lawyer on the other side thinks that it is not permitted by the rules of evidence, that lawyer may object. If I overrule the objection, the question may be answered or the exhibit received. If I sustain the objection, the question cannot be answered, and the exhibit cannot be received. Whenever I sustain an objection to a question, you must ignore the question and must not guess what the answer might have been.

Sometimes I may order that evidence be stricken from the record and that you disregard or ignore that evidence. That means when you are deciding the case, you must not consider the stricken evidence for any purpose.

Authority: Manual of Model Jury Instructions for the District Courts of the Ninth Circuit (2007 ed.; last updated June 2017), Civil Instruction 1.13.

PROPOSED INSTRUCTION NO. 12
CREDIBILITY OF WITNESSES

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it.

In considering the testimony of any witness, you may take into account:

- (1) the opportunity and ability of the witness to see or hear or know the things testified to;
- (2) the witness's memory;
- (3) the witness's manner while testifying;
- (4) the witness's interest in the outcome of the case, if any;
- (5) the witness's bias or prejudice, if any;
- (6) whether other evidence contradicted the witness's testimony;
- (7) the reasonableness of the witness's testimony in light of all the evidence; and
- (8) any other factors that bear on believability.

Sometimes a witness may say something that is not consistent with something else he or she said. Sometimes different witnesses will give different versions of what happened. People often forget things or make mistakes in what they remember. Also, two people may see the same event but remember it differently. You may consider these differences, but do not decide that testimony is untrue just because it differs from other testimony.

However, if you decide that a witness has deliberately testified untruthfully about something important, you may choose not to believe anything that witness said. On the other hand, if you think the witness testified untruthfully about some things but told the truth about others, you may accept the part you think is true and ignore the rest.

1 The weight of the evidence as to a fact does not necessarily depend on the
2 number of witnesses who testify. What is important is how believable the witnesses
3 were, and how much weight you think their testimony deserves.
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25 **Authority:** Manual of Model Jury Instructions for the District Courts of the Ninth
26 Circuit (2007 ed.; last updated June 2017), Civil Instruction 1.14.
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PROPOSED INSTRUCTION NO. 13
CONDUCT OF THE JURY

I will now say a few words about your conduct as jurors.

First, keep an open mind throughout the trial, and do not decide what the verdict should be until you and your fellow jurors have completed your deliberations at the end of the case.

Second, because you must decide this case based only on the evidence received in the case and on my instructions as to the law that applies, you must not be exposed to any other information about the case or to the issues it involves during the course of your jury duty. Thus, until the end of the case or unless I tell you otherwise:

Do not communicate with anyone in any way and do not let anyone else communicate with you in any way about the merits of the case or anything to do with it. This includes discussing the case in person, in writing, by phone or electronic means, via email, text messaging, or any internet chat room, blog, website or application, including but not limited to Facebook, YouTube, Twitter, Instagram, LinkedIn, Snapchat, or any other forms of social media. This applies to communicating with your fellow jurors until I give you the case for deliberation, and it applies to communicating with everyone else including your family members, your employer, the media or press, and the people involved in the trial, although you may notify your family and your employer that you have been seated as a juror in the case, and how long you expect the trial to last. But, if you are asked or approached in any way about your jury service or anything about this case, you must respond that you have been ordered not to discuss the matter and report the contact to the court.

1 Because you will receive all the evidence and legal instruction
2 you properly may consider to return a verdict: do not read, watch or
3 listen to any news or media accounts or commentary about the case or
4 anything to do with it[,although I have no information that there will be
5 news reports about this case]; do not do any research, such as consulting
6 dictionaries, searching the Internet, or using other reference materials;
7 and do not make any investigation or in any other way try to learn about
8 the case on your own. Do not visit or view any place discussed in this
9 case, and do not use Internet programs or other devices to search for or
10 view any place discussed during the trial. Also, do not do any research
11 about this case, the law, or the people involved—including the parties,
12 the witnesses or the lawyers—until you have been excused as jurors. If
13 you happen to read or hear anything touching on this case in the media,
14 turn away and report it to me as soon as possible.

15 These rules protect each party's right to have this case decided only on
16 evidence that has been presented here in court. Witnesses here in court take an oath
17 to tell the truth, and the accuracy of their testimony is tested through the trial process.
18 If you do any research or investigation outside the courtroom, or gain any
19 information through improper communications, then your verdict may be influenced
20 by inaccurate, incomplete or misleading information that has not been tested by the
21 trial process. Each of the parties is entitled to a fair trial by an impartial jury, and if
22 you decide the case based on information not presented in court, you will have
23 denied the parties a fair trial. Remember, you have taken an oath to follow the rules,
24 and it is very important that you follow these rules.

25 A juror who violates these restrictions jeopardizes the fairness of these
26 proceedings[, and a mistrial could result that would require the entire trial process to
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1 start over]. If any juror is exposed to any outside information, please notify the court
2 immediately.

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25 **Authority:** Manual of Model Jury Instructions for the District Courts of the Ninth
26 Circuit (2007 ed.; last updated June 2017), Civil Instruction 1.15.
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PROPOSED INSTRUCTION NO. 14
PUBLICITY DURING TRIAL

If there is any news media account or commentary about the case or anything to do with it, you must ignore it. You must not read, watch or listen to any news media account or commentary about the case or anything to do with it. The case must be decided by you solely and exclusively on the evidence that will be received in the case and on my instructions as to the law that applies. If any juror is exposed to any outside information, please notify me immediately.

Authority: Manual of Model Jury Instructions for the District Courts of the Ninth Circuit (2007 ed.; last updated June 2017), Civil Instruction 1.16.

PROPOSED INSTRUCTION NO. 15

NO TRANSCRIPT AVAILABLE TO JURY

I urge you to pay close attention to the trial testimony as it is given. During deliberations you will not have a transcript of the trial testimony.

Authority: Manual of Model Jury Instructions for the District Courts of the Ninth Circuit (2007 ed.; last updated June 2017), Civil Instruction 1.17.

PROPOSED INSTRUCTION NO. 16
TAKING NOTES

If you wish, you may take notes to help you remember the evidence. If you do take notes, please keep them to yourself until you go to the jury room to decide the case. Do not let notetaking distract you. When you leave, your notes should be left in the [courtroom] [jury room] [envelope in the jury room]. No one will read your notes.

Whether or not you take notes, you should rely on your own memory of the evidence.

Notes are only to assist your memory. You should not be overly influenced by your notes or those of other jurors.

Authority: Manual of Model Jury Instructions for the District Courts of the Ninth Circuit (2007 ed.; last updated June 2017), Civil Instruction 1.18.

PROPOSED INSTRUCTION NO. 17
BENCH CONFERENCES AND RECESSES

From time to time during the trial, it [may become] [became] necessary for me to talk with the attorneys out of the hearing of the jury, either by having a conference at the bench when the jury [is] [was] present in the courtroom, or by calling a recess. Please understand that while you [are] [were] waiting, we [are] [were] working. The purpose of these conferences is not to keep relevant information from you, but to decide how certain evidence is to be treated under the rules of evidence and to avoid confusion and error.

Of course, we [will do] [have done] what we [can] [could] to keep the number and length of these conferences to a minimum. I [may] [did] not always grant an attorney's request for a conference. Do not consider my granting or denying a request for a conference as any indication of my opinion of the case or of what your verdict should be.

Authority: Manual of Model Jury Instructions for the District Courts of the Ninth Circuit (2007 ed.; last updated June 2017), Civil Instruction 1.20.

PROPOSED INSTRUCTION NO. 18

OUTLINE OF TRIAL

Trials proceed in the following way: First, each side may make an opening statement. An opening statement is not evidence. It is simply an outline to help you understand what that party expects the evidence will show. A party is not required to make an opening statement.

TPC will then present evidence, and counsel for UMC, TIGA, GMG and Ultraman USA may cross-examine. Then UMC, TIGA, GMG and Ultraman USA may present evidence, and counsel for TPC may cross-examine.

After the evidence has been presented, I will instruct you on the law that applies to the case and the attorneys will make closing arguments.

After that, you will go to the jury room to deliberate on your verdict.

Authority: Manual of Model Jury Instructions for the District Courts of the Ninth Circuit (2007 ed.; last updated June 2017), Civil Instruction 1.21 (modified to include references to counterdefendants).

PROPOSED INSTRUCTION NO. 19
STIPULATED TESTIMONY

The parties have agreed what [*witness*]'s testimony would be if called as a witness. You should consider that testimony in the same way as if it had been given here in court.

Authority: Manual of Model Jury Instructions for the District Courts of the Ninth Circuit (2007 ed.; last updated June 2017), Civil Instruction 2.1 (to be used only if the parties stipulate to what a witness' testimony would be).

PROPOSED INSTRUCTION NO. 20
STIPULATIONS OF FACT

The parties have agreed to certain facts that will be read to you. You must therefore treat these facts as having been proved.

Authority: Manual of Model Jury Instructions for the District Courts of the Ninth Circuit (2007 ed.; last updated June 2017), Civil Instruction 2.2 (modified to include certain bracketed language and to delete other bracketed language).

PROPOSED INSTRUCTION NO. 21

DEPOSITION IN LIEU OF LIVE TESTIMONY

A deposition is the sworn testimony of a witness taken before trial. The witness is placed under oath to tell the truth and lawyers for each party may ask questions. The questions and answers are recorded. [When a person is unavailable to testify at trial, the deposition of that person may be used at the trial.]

The deposition of [*name of witness*] was taken on [*date*]. Insofar as possible, you should consider deposition testimony, presented to you in court in lieu of live testimony, in the same way as if the witness had been present to testify.

[Do not place any significance on the behavior or tone of voice of any person reading the questions or answers.]

Authority: Manual of Model Jury Instructions for the District Courts of the Ninth Circuit (2007 ed.; last updated June 2017), Civil Instruction 2.4

PROPOSED INSTRUCTION NO. 22
FOREIGN LANGUAGE TESTIMONY

You [are about to hear] [have heard] testimony of a witness who [will be testifying] [testified] in the [*specify foreign language*] language. Witnesses who do not speak English or are more proficient in another language testify through an official court interpreter. Although some of you may know the [*specify foreign language*] language, it is important that all jurors consider the same evidence. Therefore, you must accept the interpreter's translation of the witness's testimony. You must disregard any different meaning.

You must not make any assumptions about a witness or a party based solely on the use of an interpreter to assist that witness or party.

Authority: Manual of Model Jury Instructions for the District Courts of the Ninth Circuit (2007 ed.; last updated June 2017), Civil Instruction 2.8.

PROPOSED INSTRUCTION NO. 23
USE OF INTERROGATORIES

Evidence [will now be] [was] presented to you in the form of answers of one of the parties to written interrogatories submitted by the other side. These answers were given in writing and under oath before the trial in response to questions that were submitted under established court procedures. You should consider the answers, insofar as possible, in the same way as if they were made from the witness stand.

Authority: Manual of Model Jury Instructions for the District Courts of the Ninth Circuit (2007 ed.; last updated June 2017), Civil Instruction 2.11.

PROPOSED INSTRUCTION NO. 23
USE OF REQUESTS FOR ADMISSION

Evidence [will now be] [was] presented to you in the form of admissions to the truth of certain facts. These admissions were given in writing before the trial, in response to requests that were submitted under established court procedures. You must treat these facts as having been proved.

Authority: Manual of Model Jury Instructions for the District Courts of the Ninth Circuit (2007 ed.; last updated June 2017), Civil Instruction 2.12.

PROPOSED INSTRUCTION NO. 24

EXPERT OPINION

You [have heard] [are about to hear] testimony from [name] who [testified] [will testify] to opinions and the reasons for [his] [her] opinions. This opinion testimony is allowed, because of the education or experience of this witness.

Such opinion testimony should be judged like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the reasons given for the opinion, and all the other evidence in the case.

Authority: Manual of Model Jury Instructions for the District Courts of the Ninth Circuit (2007 ed.; last updated June 2017), Civil Instruction 2.13.

PROPOSED INSTRUCTION NO. 25

CHARTS AND SUMMARIES NOT RECEIVED IN EVIDENCE

Certain charts and summaries not admitted into evidence [may be] [have been] shown to you in order to help explain the contents of books, records, documents, or other evidence in the case. Charts and summaries are only as good as the underlying evidence that supports them.

You should, therefore, give them only such weight as you think the underlying evidence deserves.

Authority: Manual of Model Jury Instructions for the District Courts of the Ninth Circuit (2007 ed.; last updated June 2017), Civil Instruction 2.14.

PROPOSED INSTRUCTION NO. 26

CHARTS AND SUMMARIES RECEIVED IN EVIDENCE

Certain charts and summaries [may be] [have been] admitted into evidence to illustrate information brought out in the trial. Charts and summaries are only as good as the testimony or other admitted evidence that supports them. You should, therefore, give them only such weight as you think the underlying evidence deserves.

Authority: Manual of Model Jury Instructions for the District Courts of the Ninth Circuit (2007 ed.; last updated June 2017), Civil Instruction 2.15.

PROPOSED INSTRUCTION NO. 27
EVIDENCE IN ELECTRONIC FORMAT

Those exhibits received in evidence that are capable of being displayed electronically will be provided to you in that form, and you will be able to view them in the jury room. A computer, projector, printer and accessory equipment will be available to you in the jury room.

A court technician will show you how to operate the computer and other equipment; how to locate and view the exhibits on the computer; and how to print the exhibits. You will also be provided with a paper list of all exhibits received in evidence. You may request a paper copy of any exhibit received in evidence by sending a note through the [clerk] [bailiff].) If you need additional equipment or supplies or if you have questions about how to operate the computer or other equipment, you may send a note to the [clerk] [bailiff], signed by your foreperson or by one or more members of the jury. Do not refer to or discuss any exhibit you were attempting to view.

If a technical problem or question requires hands-on maintenance or instruction, a court technician may enter the jury room with [the clerk] [the bailiff] present for the sole purpose of assuring that the only matter that is discussed is the technical problem. When the court technician or any non juror is in the jury room, the jury shall not deliberate. No juror may say anything to the court technician or any non juror other than to describe the technical problem or to seek information about operation of the equipment. Do not discuss any exhibit or any aspect of the case.

The sole purpose of providing the computer in the jury room is to enable jurors to view the exhibits received in evidence in this case. You may not use the computer for any other purpose. At my direction, technicians have taken steps to ensure that the computer does not permit access to the Internet or to any “outside” website, database, directory, game, or other material. Do not attempt to alter the

1 computer to obtain access to such materials. If you discover that the computer
2 provides or allows access to such materials, you must inform the court immediately
3 and refrain from viewing such materials. Do not remove the computer or any
4 electronic data [disk] from the jury room, and do not copy any such data.

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25 **Authority:** Manual of Model Jury Instructions for the District Courts of the Ninth
26 Circuit (2007 ed.; last updated June 2017), Civil Instruction 2.16.
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PROPOSED INSTRUCTION NO. 29

DUTY TO DELIBERATE

Before you begin your deliberations, elect one member of the jury as your presiding juror. The presiding juror will preside over the deliberations and serve as the spokesperson for the jury in court.

You shall diligently strive to reach agreement with all of the other jurors if you can do so. Your verdict must be unanimous.

Each of you must decide the case for yourself, but you should do so only after you have considered all of the evidence, discussed it fully with the other jurors, and listened to their views.

It is important that you attempt to reach a unanimous verdict but, of course, only if each of you can do so after having made your own conscientious decision. Do not be unwilling to change your opinion if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or change an honest belief about the weight and effect of the evidence simply to reach a verdict.

Authority: Manual of Model Jury Instructions for the District Courts of the Ninth Circuit (2007 ed.; last updated June 2017), Civil Instruction 3.1.

PROPOSED INSTRUCTION NO. 30

CONSIDERATION OF EVIDENCE—CONDUCT OF THE JURY

Because you must base your verdict only on the evidence received in the case and on these instructions, I remind you that you must not be exposed to any other information about the case or to the issues it involves. Except for discussing the case with your fellow jurors during your deliberations:

Do not communicate with anyone in any way and do not let anyone else communicate with you in any way about the merits of the case or anything to do with it. This includes discussing the case in person, in writing, by phone or electronic means, via email, via text messaging, or any Internet chat room, blog, website or application, including but not limited to Facebook, YouTube, Twitter, Instagram, LinkedIn, Snapchat, or any other forms of social media. This applies to communicating with your family members, your employer, the media or press, and the people involved in the trial. If you are asked or approached in any way about your jury service or anything about this case, you must respond that you have been ordered not to discuss the matter and to report the contact to the court.

Do not read, watch, or listen to any news or media accounts or commentary about the case or anything to do with it[, although I have no information that there will be news reports about this case]; do not do any research, such as consulting dictionaries, searching the Internet, or using other reference materials; and do not make any investigation or in any other way try to learn about the case on your own. Do not visit or view any place discussed in this case, and do not use Internet programs or other devices to search for or view any place discussed during the trial. Also, do not do any research about this case, the law, or the people involved—including the parties, the witnesses or the

1 lawyers—until you have been excused as jurors. If you happen to read
2 or hear anything touching on this case in the media, turn away and
3 report it to me as soon as possible.

4 These rules protect each party's right to have this case decided only on
5 evidence that has been presented here in court. Witnesses here in court take an oath
6 to tell the truth, and the accuracy of their testimony is tested through the trial process.
7 If you do any research or investigation outside the courtroom, or gain any
8 information through improper communications, then your verdict may be influenced
9 by inaccurate, incomplete or misleading information that has not been tested by the
10 trial process. Each of the parties is entitled to a fair trial by an impartial jury, and if
11 you decide the case based on information not presented in court, you will have
12 denied the parties a fair trial. Remember, you have taken an oath to follow the rules,
13 and it is very important that you follow these rules.

14 A juror who violates these restrictions jeopardizes the fairness of these
15 proceedings[, and a mistrial could result that would require the entire trial process to
16 start over]. If any juror is exposed to any outside information, please notify the court
17 immediately.

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25 **Authority:** Manual of Model Jury Instructions for the District Courts of the Ninth
26 Circuit (2007 ed.; last updated June 2017), Civil Instruction 3.2.

PROPOSED INSTRUCTION NO. 31
COMMUNICATION WITH COURT

If it becomes necessary during your deliberations to communicate with me, you may send a note through the [clerk] [bailiff], signed by any one or more of you. No member of the jury should ever attempt to communicate with me except by a signed writing. I will not communicate with any member of the jury on anything concerning the case except in writing or here in open court. If you send out a question, I will consult with the lawyers before answering it, which may take some time. You may continue your deliberations while waiting for the answer to any question. Remember that you are not to tell anyone—including the court—how the jury stands, whether in terms of vote count or otherwise, until after you have reached a unanimous verdict or have been discharged.

Authority: Manual of Model Jury Instructions for the District Courts of the Ninth Circuit (2007 ed.; last updated June 2017), Civil Instruction 3.3.

PROPOSED INSTRUCTION NO. 28
READBACK OR PLAYBACK

Because a request has been made for a [readback] [playback] of the testimony of [*witness's name*] it is being provided to you, but you are cautioned that all [readbacks] [playbacks] run the risk of distorting the trial because of overemphasis of one portion of the testimony. [Therefore, you will be required to hear all the witness's testimony on direct and cross-examination, to avoid the risk that you might miss a portion bearing on your judgment of what testimony to accept as credible.] [Because of the length of the testimony of this witness, excerpts will be [read] [played].] The [readback] [playback] could contain errors. The [readback] [playback] cannot reflect matters of demeanor [, tone of voice,] and other aspects of the live testimony. Your recollection and understanding of the testimony controls. Finally, in your exercise of judgment, the testimony [read] [played] cannot be considered in isolation, but must be considered in the context of all the evidence presented.

Authority: Manual of Model Jury Instructions for the District Courts of the Ninth Circuit (2007 ed.; last updated June 2017), Civil Instruction 3.4 (if the Court exercises its discretion to read back or play back testimony).

PROPOSED INSTRUCTION NO. 29
RETURN OF VERDICT

A verdict form has been prepared for you. [*Explain verdict form as needed.*]
After you have reached unanimous agreement on a verdict, your [presiding juror]
[foreperson] should complete the verdict form according to your deliberations, sign
and date it, and advise the [clerk] [bailiff] that you are ready to return to the
courtroom.

Authority: Manual of Model Jury Instructions for the District Courts of the Ninth
Circuit (2007 ed.; last updated June 2017), Civil Instruction 3.5.

PROPOSED INSTRUCTION NO. 30

ADDITIONAL INSTRUCTIONS OF LAW

At this point I will give you an additional instruction. By giving an additional instruction at this time, I do not mean to emphasize this instruction over any other instruction.

You are not to attach undue importance to the fact that this instruction was read separately to you. You must consider this instruction together with all of the other instructions that were given to you.

[Insert text of new instruction.]

You will now retire to the jury room and continue your deliberations.

Authority: Manual of Model Jury Instructions for the District Courts of the Ninth Circuit (2007 ed.; last updated June 2017), Civil Instruction 3.6.

PROPOSED INSTRUCTION NO. 31
DEADLOCKED JURY

Members of the jury, you have advised that you have been unable to agree upon a verdict in this case. I have decided to suggest a few thoughts to you.

As jurors, you have a duty to discuss the case with one another and to deliberate in an effort to reach a unanimous verdict if each of you can do so without violating your individual judgment and conscience. Each of you must decide the case for yourself, but only after you consider the evidence impartially with the other jurors. During your deliberations, you should not be unwilling to reexamine your own views and change your opinion if you become persuaded that it is wrong. However, you should not change an honest belief as to the weight or effect of the evidence solely because of the opinions of the other jurors or for the mere purpose of returning a verdict.

All of you are equally honest and conscientious jurors who have heard the same evidence. All of you share an equal desire to arrive at a verdict. Each of you should ask yourself whether you should question the correctness of your present position.

I remind you that in your deliberations you are to consider the instructions I have given you as a whole. You should not single out any part of any instruction, including this one, and ignore others. They are all equally important.

You may now return to the jury room and continue your deliberations.

Authority: Manual of Model Jury Instructions for the District Courts of the Ninth Circuit (2007 ed.; last updated June 2017), Civil Instruction 3.7.

PROPOSED INSTRUCTION NO. 32
CONTINUING DELIBERATIONS
AFTER JUROR IS DISCHARGED

[One] [some] of your fellow jurors [has] [have] been excused from service and will not participate further in your deliberations. You should not speculate about the reason the [juror is] [jurors are] no longer present.

You should continue your deliberations with the remaining jurors. Do not consider the opinions of the excused [juror] [jurors] as you continue deliberating. All the previous instructions given to you still apply, including the requirement that all the remaining jurors unanimously agree on a verdict.

Authority: Manual of Model Jury Instructions for the District Courts of the Ninth Circuit (2007 ed.; last updated June 2017), Civil Instruction 3.8.

PROPOSED INSTRUCTION NO. 33

CORPORATIONS AND PARTNERSHIPS—FAIR TREATMENT

All parties are equal before the law and a corporation is entitled to the same fair and conscientious consideration by you as any party.

Authority: Manual of Model Jury Instructions for the District Courts of the Ninth Circuit (2007 ed.; last updated June 2017), Civil Instruction 4.1 (modified to include one bracketed term and delete another bracketed term).

PROPOSED INSTRUCTION NO. 34
LIABILITY OF CORPORATIONS—
SCOPE OF AUTHORITY NOT IN ISSUE

Under the law, a corporation is considered to be a person. It can only act through its employees, agents, directors, or officers. Therefore, a corporation is responsible for the acts of its employees, agents, directors, and officers performed within the scope of authority.

Authority: Manual of Model Jury Instructions for the District Courts of the Ninth Circuit (2007 ed.; last updated June 2017), Civil Instruction 4.2.

PROPOSED INSTRUCTION NO. 39

PRELIMINARY INSTRUCTION—COPYRIGHT

TPC claims rights to copyrights in works based on the “Ultraman” characters and seeks damages for copyright infringement. Each party accused of copyright infringement denies infringing the copyrights and contends that its use of the copyrighted works was authorized. To help you understand the evidence in this case, I will explain some of the legal terms you will hear during this trial.

DEFINITION OF COPYRIGHT

The owner (usually the initial author or creator) of a copyrighted work has the right to exclude any other person from reproducing, distributing, publicly performing or publicly displaying the work covered by copyright for a specific period of time, unless the owner has transferred such right to another party.

A copyrighted work can include a motion picture or other audiovisual work, or the characters appearing in such a work.

COPYRIGHT INTERESTS

The copyright owner may agree to transfer to another person the exclusive right to reproduce, distribute, publicly perform, or publicly display the copyrighted work. To be valid, the transfer must be in writing and signed by the copyright owner. The person to whom this right is transferred is called an exclusive licensee.

HOW COPYRIGHT IS OBTAINED

Copyright automatically attaches to a work the moment the work is fixed in any tangible medium of expression. The owner of the copyright may register the copyright by completing a registration form and depositing a copy of the copyrighted work with the Copyright Office. After determining that the material deposited constitutes copyrightable subject matter and that certain legal and formal requirements are satisfied, the Register of Copyrights registers the work and issues a certificate of registration to the copyright owner.

1 **BURDEN OF PROOF**

2 In this case, TPC contends that one or more other parties have infringed its
3 copyrights. TPC has the burden of proving by a preponderance of the evidence that
4 it is the owner of the copyrights and that the party accused of infringement copied
5 original expression from the copyrighted works. Preponderance of the evidence
6 means that you must be persuaded by the evidence that it is more probably true than
7 not true that the copyrighted work was infringed.

8 **LIABILITY FOR INFRINGEMENT**

9 One who reproduces, distributes, publicly performs or publicly displays a
10 copyrighted work without authority from the copyright owner or exclusive licensee
11 during the term of the copyright infringes the copyright.

12 **DEFENSES TO INFRINGEMENT**

13 Each party accused of infringement contends that there is no copyright
14 infringement. There is no copyright infringement when the party accused of
15 infringement holds a valid license authorizing it to use the copyrighted work.

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24 **Authority:** Manual of Model Jury Instructions for the District Courts of the Ninth
25 Circuit (2007 ed.; last updated June 2017), Civil Instruction 17.1 (modified to
26 include certain provisions, to exclude certain provisions, to state that the initial
27 owner is usually the author, and to otherwise reflect the claims and defenses being
28 asserted by the parties).

PROPOSED INSTRUCTION NO. 40

COPYRIGHT—DEFINED

(17 U.S.C. § 106)

Copyright is the exclusive right to copy. This right to copy includes the exclusive rights to, or authorize others to:

1. reproduce the copyrighted work in copies;
2. distribute copies of the copyrighted work to the public by sale or other transfer of ownership or by rental or lease or lending;
3. display publicly a copyrighted work; and
4. perform publicly a copyrighted work.

It is the owner of a copyright who may exercise these exclusive rights, or an exclusive licensee to the extent such rights were transferred to it in a valid license agreement. In general, copyright law protects against reproduction, or public distribution, display or performance of identical or substantially similar copies of the owner's copyrighted work without the owner's permission. An owner may enforce these rights to exclude others in an action for copyright infringement.

Authority: Manual of Model Jury Instructions for the District Courts of the Ninth Circuit (2007 ed.; last updated June 2017), Civil Instruction 17.2 (modified to include certain provisions, to exclude certain provisions, and to otherwise reflect the claims being asserted by the parties).

PROPOSED INSTRUCTION NO. 41
COPYRIGHT INFRINGEMENT—ELEMENTS—
OWNERSHIP AND COPYING
(17 U.S.C. § 501(a)–(b))

Anyone who copies original expression from a copyrighted work during the term of the copyright without the owner’s permission infringes the copyright.

On TPC’s copyright infringement claim, TPC has the burden of proving by a preponderance of the evidence that:

1. TPC is the owner of a valid copyright; and
2. the parties accused of infringement copied original expression from the copyrighted work.

If you find that TPC has proved both of these elements, your verdict should be for TPC. If, on the other hand, you find that TPC has failed to prove either of these elements as to any party accused of infringement, your verdict should be for the party accused of infringement.

Authority: Manual of Model Jury Instructions for the District Courts of the Ninth Circuit (2007 ed.; last updated June 2017), Civil Instruction 17.5 (modified to reflect the fact that both UMC and TPC are asserting claims for copyright infringement and that UMC is suing as an exclusive licensee rather than as an owner).

PROPOSED INSTRUCTION NO. 42
DEFENSE OF COPYRIGHT LICENSE—
AUTHENTICITY OF CONTRACT

UMC, TIGA, and GMG contend that the March 4, 1976 License Granting Agreement is an authentic contract that was negotiated between Noboru Tsuburaya and Mr. Sompote and signed and sealed by Noboru Tsuburaya on behalf of TPC and Tsuburaya Enterprise Co., Ltd., and that, based on the March 4, 1976 License Granting Agreement, their use of “Ultraman” works was authorized and not infringing.

TPC disputes that the March 4, 1976 License Granting Agreement is an authentic contract, contending instead that it was fabricated and forged by, or for the benefit of, Mr. Sompote.

UMC, TIGA, and GMG bear the burden of proving by a preponderance of the evidence that the March 4, 1976 License Granting Agreement is an authentic contract. To decide if UMC, TIGA and GMG have met their burden, you may consider all evidence that is relevant to whether the document was negotiated between Noboru Tsuburaya and Mr. Sompote and was signed and sealed by Noboru Tsuburaya on behalf of TPC and Tsuburaya Enterprise Co., Ltd.

Authority: This instruction is based on the parties’ agreement as to how to describe the authenticity inquiry to be made by the jury.

PROPOSED INSTRUCTION NO. 43

CONTRACT FORMATION—USE OF HANKO SEAL

In Japan, a person or company may affix a “Hanko” seal on a document (including a legal instrument such as a written contract) instead of a signature.

Authority: Commercial Code of Japan, Article 32 (“Where a person’s signature is required pursuant to the provisions of this Code, affixing his/her name and seal may be substituted for the signature”); Expert Report of Yoshimasa Furuta, dated March 18, 2017, at 2 (discussing use of Hanko seal under Japanese law); Initial Expert Report of Takashi Ejiri served on March 20, 2017 at 4-8 (discussing use of Hanko seal under Japanese law).

PROPOSED INSTRUCTION NO. 44
CONTRACT FORMATION—
APPROVAL BY BOARD OF DIRECTORS

Under Japanese law, a resolution of the board of directors of a company is required to authorize a representative of the company to enter into a significant contract on behalf of the company or one that involves a conflict of interest for the company. If the board of directors of a company does not issue such a resolution for a contract that requires one, the company will be bound by the contract unless the other party to the contract was aware, or should have been aware, that such a resolution was required and was not obtained.

Authority: Expert Report of Yoshimasa Furuta, dated March 18, 2017, at 3-4, and Rebuttal Report of Yoshimasa Furuta, dated April 14, 2017, at 4 (discussing board approval required under Japanese law); Judgment of the Supreme Court, September 22, 1965, Minshu Vol. 19, No. 6, Page 1656 (if a resolution of board of directors is not obtained for a matter that requires such resolution, it is invalid “if the counterparty is aware or should be aware that such resolution has not been obtained”); Article 260 of the Commercial Code of Japan (Law No. 48 of 1899; as effective as of March 1976) (under Japanese law, the board of directors of a company shall decide the execution of the company business); Omori & Yazawa ed., “*Chushaku Kaishaho* [Commentary on Company Law], Volume 4” (September 1968) at page 336; Teruhisa Ishii, “*Shoho* [Commercial Code], Volume 1” (revised ed., February 1956) at page 309; Article 265 of the Commercial Code of Japan (Law No. 48 of 1899; as effective as of March 1976); the Supreme Court judgment dated December 25, 1968 (Minshu vol. 22, no. 13, page 3511).

PROPOSED INSTRUCTION NO. 35
ASSIGNMENT NOT CONTESTED

UMC was not a party to the March 4, 1976 License Granting Agreement. However, if UMC, TIGA, and GMG prove that the March 4, 1976 License Granting Agreement is an authentic and valid contract, then the March 4, 1976 License Granting Agreement is a defense to TPC's claim for copyright infringement because Mr. Sompote's claimed rights under that Agreement have been transferred to UMC. This transfer is referred to as an "assignment."

Authority: CACI 327 (modified to reflect parties to assignments and claims of parties).

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PROPOSED INSTRUCTION NO. 36
COPYRIGHT—DAMAGES
(17 U.S.C. § 504)

If you find for TPC on its copyright infringement claim, you must determine TPC's damages on that claim. TPC is entitled to recover any profits of the party committing infringement that are attributable to the infringement. TPC must prove damages by a preponderance of the evidence.

Authority: Manual of Model Jury Instructions for the District Courts of the Ninth Circuit (2007 ed.; last updated June 2017), Civil Instruction 17.32 (modified to reflect type of damages being sought by TPC). [In the event that the parties stipulate to damages, as they have discussed, this instruction should be removed.]